

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE CITY OF NEW YORK,

Plaintiff,

11-CV-03304 (RJH)

-against-

AMERICAN MOTORISTS INSURANCE COMPANY, as
successor in interest to CARLISLE INSURANCE
COMPANY, and WESTCHESTER FIRE INSURANCE
COMPANY,

~~JOINT PROPOSED~~
SCHEDULING ORDER

Defendants.
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1) Description of the Case

a. The Attorneys of Record are:

For Plaintiff THE CITY OF NEW YORK ("the City"):

Aaron M. Bloom and Eric Proshansky
Office of Michael Cardozo, Corporation Counsel of the City of New York
100 Church Street, 20th Floor
New York, New York 10007
(212) 788-0969 (Bloom); (212) 788-1324 (Proshansky)
abloom@law.nyc.gov; eproshan@law.nyc.gov

*For Defendant AMERICAN MOTORISTS INSURANCE COMPANY, ("AMIC") as successor in
interest to CARLISLE INSURANCE COMPANY ("Carlisle"):*

Steven J. Fried, Esq.
Clausen Miller P.C.
One Chase Manhattan Plaza
New York, NY 10005
(212) 805-3920
sfried@clausen.com

For Defendant WESTCHESTER FIRE INSURANCE COMPANY ("WFIC"):

Thomas R. Orofino, Esq. and Joseph Powers
Sedgwick LLP
125 Broad Street, 39th Floor
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(212) 422-0202
thomas.orofino@sedgwicklaw.com; Joseph.Powers@sdma.com

b. The basis for federal jurisdiction is removal based on diversity.

c. The City's claims, based on alleged breaches of insurance contracts, seek a declaration that defendants AMIC, as successor in interest to Carlisle, and WFIC had a duty to defend the City in an action entitled *Ruben Rivera and Olga Rivera v. The City of New York, Diamond Asphalt Corp., Welsbach Electric Corporation, Levi Walton, DCR Trucking and Excavation Inc., Urbitran Associates Engineers P.C., Consolidated Edison Company of New York, Inc. and Mulvihill Electric Co., Inc.*, New York Supreme Court, Bronx County, Index No. 7931/98 (the "*Rivera Action*"). The City also seeks recovery of its defense fees and costs in the *Rivera Action*. Now that the City has settled the claims against the City in the *Rivera Action*, the City seeks to amend its complaint to seek indemnity for amounts paid by the City in that settlement. AMIC's counterclaim seeks a declaration that it had no duty to defend the City in the *Rivera action*.

d. The major legal and factual issues are:

- i) Whether the City is an additional insured under the Carlisle policy at issue in this case;
- ii) Whether the Carlisle policy has been exhausted, and if so, whether nonetheless, Carlisle had a duty to defend and is liable for the City's defense costs and indemnity; and
- iii) Whether the City is entitled to coverage under the WFIC policy and whether certain policy provisions, such as late notice, may preclude coverage.

e. The relief sought, is described in section 1.c above.

2) Proposed Case Management Plan

a. There are no pending motions, but there are two proposed motions. Defendant WFIC proposes to move to dismiss. The City proposes to move to amend the complaint.

b. Cutoff date for joinder of additional parties: 30 days after deadline for amendments to pleadings.

c. Cutoff date for amendments to pleadings: November 8, 2011 (unless leave to amend is granted after decision on a motion to dismiss).

d. Discovery Schedule:

i. Rule 26(a)(1) disclosures due October 10, 2011.

ii. Fact discovery to be completed by ~~June 8, 2012~~ **JANUARY 9, 2012**

iii. No parties anticipate using experts.

iv. No parties anticipate using experts.

e. Cutoff date for filing dispositive motions: 30 days after completion of discovery, but any parties may file earlier.

f. Final Pretrial Order: To be filed 30 days after decisions on all dispositive motions.


g. Trial Schedule: A jury trial is not requested. The probable length of trial is not more than three days. The case will be ready for trial 30 days after decisions on all dispositive motions.

3) Magistrate Judge: The parties to not consent to proceed before a Magistrate Judge.

4) Status of Settlement Discussions: Initial settlement discussions have taken place. The parties will inform the Court at the initial conference whether they request a settlement conference.

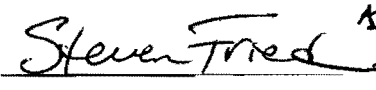
Respectfully submitted,

MICHAEL A. CARDOZO
Corporation Counsel of the City of New York
Attorney for Plaintiff the City of New York

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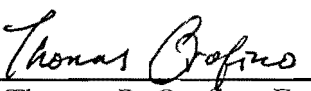
Dated: New York, NY
September 6, 2011

CLAUSEN MILLER P.C.
Attorneys for Defendant AMIC

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Dated: New York, NY
September 6, 2011

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thomas.orofino@sedgwicklaw.com

Dated: New York, NY
September 6, 2011

PLAINTIFF MAY SUBMIT AN AMENDED COMPLAINT
BEFORE 9/23/11.
A STATUS CONFERENCE WILL BE HELD ON
JANUARY 20, 2012 AT 10:00 AM.

SO ORDERED


RICHARD J. MOLWELL
UNITED STATES DISTRICT JUDGE

9/13/11